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S. Larry Crookston, Randi L. Crookston, and Anna W. Drake, Spencer Larry Crookston, Randi Lynn Crookston v. Fire Insurance Exchange : Reply Brief

Utah Supreme Court

L. Rich Humphreys; Christensen, Jensen and Powell; Attorneys for Plaintiffs-Appellees.
Philip R. Fishler; Stephen J. Trayner; Strong and Hanni; Frank A. Roybal; Attorneys for Defendant-Appellant.

IN THE UTAH SUPREME COURT

S. LARRY CROOKSTON, RANDI L. CROOKSTON, AND ANNA W. DRAKE, Trustee of the Estate of SPENCER LARRY CROOKSTON and RANDI LYNN CROOKSTON, Plaintiffs-Appellees, vs. FIRE INSURANCE EXCHANGE, a California corporation, Defendant-Appellant.	Docket No. 920172 Category 16

REPLY BRIEF OF APPELLANT FIRE INSURANCE EXCHANGE

Appeal from the Judgment of the Third Judicial District Court,
Salt Lake County, Honorable J. Dennis Frederick presiding

Philip R. Fishler
Stephen J. Trayner
STRONG & HANNI
Sixth Floor Boston Building
Salt Lake City, Utah 84111

Attorneys for Defendant-Appellant

Frank A. Roybal
442 North Main Street
Bountiful, Utah 84010

Attorney for Defendant-Appellant

L. Rich Humpherys
CHRISTENSEN, JENSEN & POWELL
510 Clark Leaming Building
Salt Lake City, Utah 84101

Attorneys for Plaintiffs-Appellees

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L. Rich Humpherys
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Salt Lake City, Utah 84101

Attorneys for Plaintiffs-Appellees

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REPLY BRIEF OF APPELLANT FIRE INSURANCE EXCHANGE

Defendant-Appellant Fire Insurance Exchange respectfully submits this brief in reply to the brief filed on behalf of plaintiffs-appellees in the above-entitled matter.

STATEMENT OF FACTS

Although defendant acknowledges that this Court reviews the facts in the light most favorable to the jury's verdict, State v. Verde, 770 P.2d 116, 117 (Utah 1989), several facts contained in plaintiffs' brief are either unsupported in the record or are recited in a potentially misleading fashion. As a result, defendant submits the following review of the record:

Paragraph 1 of plaintiffs' statement of facts indicates "Mr. Crookston continually worked 2-3 jobs and saved for many years until 1978 . . .." The record, on the other hand, reflects that

for at least part of the relevant time period, Mr. Crookston was not as industrious as plaintiffs now claim:

> Q. Was there ever a time that you had only one job and not two or three?
>
> A. I think so. There was a period of time that I may have, yes. I can't remember.

(R. 1999-2000)

Paragraph 2 of plaintiffs' statement of facts infers that the Crookstons paid $12,000 to the Bank in order to keep costs down. The fact of the matter is that the Bank required the Crookstons in September, 1981, to pay down the original construction loan in order to receive an extension on their loan. (R. 2008-2009) This extension was necessitated by delays in the construction of their unique earth home. (Id.) Due to their precarious financial condition at the time, plaintiffs had to borrow the bulk of the $12,000 from Mrs. Crookston's parents. (R. 2009)

Paragraph 2 of plaintiffs' statement of facts indicates that "[t]he Crookstons performed various services such as painting and finish work in order to keep costs down." The record indicates, however, that the house collapsed before the painting and finish work was initiated. (R. 2019-20, 2160) In fact, the portion of the record cited by plaintiffs in their brief indicates that the only work actually performed by plaintiffs was (1) helping the contractor obtain a building permit, and (2) helping direct traffic around a crane at the construction site. (R. 2019)

Paragraph 5 of plaintiffs' statement of facts indicates that plaintiffs believed that Fire Insurance "was not doing anything" to

adjust the loss at the time they requested assistance from attorney H. Ralph Klemm. Nevertheless, attorney Klemm testified at trial that Fire Insurance had in fact already been working with the original contractor of the earth home, Kyle Brewster, in an attempt to obtain a repair bid. (R. 1686-1687) As a result of Mr. Brewster's inability to promptly provide a repair bid, Fire Insurance requested Mr. Klemm's assistance in obtaining other repair bids. (Id.) Eventually, Fire Insurance, plaintiffs, their attorney, and the Bank solicited bids on the repair of the plaintiffs' unique earth home. Without exception, each experienced difficulties in obtaining detailed, competent bids (R. 1687-1688, 1976-1977, 2035, 2557)

Paragraph 11 of plaintiffs' statement of facts infers that the testimony of Argen Jager establishes that very little of the remains of the earth home were salvageable, by stating, "He had to completely tear out the interior due to the extensive damage and was able to salvage very little . . .." Mr. Jager testified that he had to remove the interior of the earth home because he entirely changed the design of the house and constructed a conventional home in its place. (R. 2667-2668)

Paragraph 25(f) of plaintiffs' statement of facts indicates that Fire Insurance's adjuster "had the audacity to expressly state that he felt good about what he did to the Crookstons!" The record reveals that such a statement was never made at trial:

> Q. How long did it take to have your deposition taken, sir?

A. As I recall, I was there on two different days, the better part of two days.

Q. Were you nervous?

A. Yes.

Q. Are you nervous right now?

A. Yes.

* * *

Q. (By Mr. Roybal) Have you been nervous a lot of times?

A. Yes.

Q. Have you lost sleep over this?

A. Yes, sir.

Q. At any time, to anyone, have you ever lied?

A. No.

Q. Have you ever not told the truth?

A. No, sir.

Q. Did you feel good about what you did?

A. Yes, sir.

Q. Did you have concerns all along about the Crookstons?

A. Yes. Our main concern is always for our policyholder.

(R. 2285-2286)

The adjuster's testimony when viewed in the context of the line of questioning posed at trial clearly does not state that "he felt good about what he did to the Crookstons," as claimed by plaintiffs.

SUMMARY OF ARGUMENT

Ordinarily overruling decisions are to be applied retroactively. This Court in Crookston v. Fire Insurance Exchange, 817 P.2d 789 (Utah 1991), articulated a standard for defining the "reasonable and rational relationship" requirement between punitive and compensatory awards. On remand, Fire Insurance requested that it be permitted a new jury trial utilizing the Crookston standards. The trial court refused. The trial court's refusal was in error and constituted an abuse of discretion.

The punitive award in this case represents the most flagrant deviation from the historical pattern of punitive damage awards in the history of this state. The deviation is significant both in terms of the sheer size of the award and the ratio the $4.0 million punitive award bears to the compensatory damages, especially the "hard" actual damages, in this case. Such a gross deviation from the historical pattern requires a finding that the award was the result of passion and prejudice.

The trial court erred in considering and adopting in its order facts and unreasonable inferences wholly outside the record. The court's reliance on such facts constitutes a separate ground for reversal of the denial of defendant's motion for new trial or remittitur.

ARGUMENT

POINT I.

FIRE INSURANCE SHOULD BE PERMITTED TO RETRY THE AMOUNT OF PUNITIVE DAMAGES TO A NEW JURY.

Plaintiffs assert that a new trial by jury on the amount of punitive damages is unwarranted because the pre-Crookston standards for awarding punitive damages were constitutionally sound, the Crookston presumptive ratio standard is to be used solely by trial judges, the plaintiffs and the judicial system would be inconvenienced by such a retrial. Fire Insurance, on the other hand, maintains that the trial court abused its discretion in refusing Fire Insurance a new trial on the amount of punitive damages.

The punitive damage award in this case is unparalleled in the history of the judicial system of the state of Utah. This Court acknowledged that the shocking award of $4.0 million clearly exceeded the general pattern of punitive damage awards made in this state since statehood. In the nearly 100 years since statehood, no award of punitive damages has so clearly stood out as being excessive as this one. In fact, the amount of the award, without consideration for accrued post-judgment interest while on appeal, is eight times greater than the next highest affirmed verdict. See Von Hake v. Thomas, 705 P.2d 766 (Utah 1985).

The jury's award of $4.0 million was the direct result of defendant's mistaken claims handling and a deficient judicial standard for awarding punitive damages. This Court in Crookston

noted repeatedly the deficiencies in the traditional "list of factors" standard used by the jury in setting the punitive damage award in this case. Although this Court refused to pass on defendant's assorted constitutional challenges to the punitive damage award, the Court did acknowledge the need for a new approach, a new standard, to provide greater direction to juries in making punitive awards and to judges in reviewing the propensity of a jury award. Crookston, 817 P.2d at 808.

The issue of whether defendant is entitled to a new jury trial boils down to basic fairness under the law. Fire Insurance maintains that it is patently unfair for one trier of fact to set the initial award of punitive damages under one standard and then to permit a reviewing court to pass upon the propriety of the award with another judicial standard. The original jury verdict was rendered by a jury that was given very little guidance on the "reasonable and rational relationship" requirement that must exist between an award of punitive damages and the actual damages in a case. On the other hand, Judge Frederick was specifically directed to take into account the need for such a reasonable and rational relationship between the punitive and compensatory damages. It is impossible to speculate with any degree of accuracy what the original jury would have done if it had been instructed under the guidelines set forth in the Crookston opinion.

While the pre-Crookston "list of factors" standard may have met constitutional muster against a federal due process challenge, this Court's action in remanding the case to the trial court for

further consideration in light of Crookston creates significant constitutional concerns. If this Court and the trial court review the excessiveness of the punitive damage award under the Crookston standards, the parties will be effectively denied procedural fairness, due process, and the right to trial by jury.

Plaintiffs' contention that a jury is ill-equipped to apply the Crookston presumptive ratio standard is ill-founded and unsupportable. The reasonable and rational relationship requirement defined in Crookston would help insure that juries carefully deliberate before awarding punitive damages in excess of the suggested ratios. If a jury knows the presumptive ratio ahead of time and then chooses to make an award in excess of the ratio, the award would strongly suggest that the jury considered the matter an unusual case worthy of such a deviation. Furthermore, a jury should be instructed as to the significance of the distinction between "hard" and "soft" type compensatory damages and take that distinction into account when fixing a punitive damage award. On remand, defendant suggested such jury instructions to the trial court. (R. 3189-90) It can scarcely be said that jurors who are competent to distinguish between general and special damages or hard and soft damages in affixing compensatory awards are somehow ill-equipped to make such distinctions when making punitive damage awards.

Plaintiffs assert that it would be unfair to now, some eleven years after the collapse of their home, to require them to retry the amount of punitive damages. Plaintiffs assert that court

dockets would be adversely affected if this matter were to be retried. The issue is not whether plaintiffs will be somehow disadvantaged by being required to retry this case. Plaintiffs cannot dispute that upon payment of the compensatory award, they were made whole. Since plaintiffs already have been made whole, this issue is simply whether plaintiffs intend to prosecute this matter further in order to promote the public policy concerns of punishment and deterrence. Clearly, even if this case is remanded for a new trial, no one is forcing plaintiffs to proceed further against their will. Since they have been made whole, any further prosecution of this matter would be presumably merely for the betterment of society, rather than for the benefit of plaintiffs' financial standing. The impact of any retrial of the issue of punitive damages would be minimal at best on plaintiffs and the resources of the judicial system of the state of Utah.

This Court in Loyal Order of Moose No. 259 v. County Board, 657 P.2d 257, 264 (Utah 1982), acknowledged that overruling decisions should ordinarily be applied retroactively. Plaintiffs pose various arguments against the application of the Crookston standards to the very case which gave rise to these new standards. While state and federal constitutions do not apparently require a new trial by jury utilizing the Crookston standards, notions of fair play and justice suggest strongly such a result. Under such circumstances, the trial court should have permitted a new jury to pass on the issue of punitive damages. In failing to permit a new

trial by jury under the Crookston standards, the trial court abused its discretion.

POINT II.

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO REMIT THE UNPRECEDENTED AWARD OF PUNITIVE DAMAGES IN THIS CASE.

The punitive award in this case represents the most flagrant deviation from the historical pattern of punitive damages awards in the history of the state of Utah. The deviation is significant both in terms of the sheer size of the award and the ratio the punitive award bears to the compensatory damages in the case.

A. Sheer Size of the Punitive Damage Award Required a Remittitur

On June 11, 1987, judgment was entered against Fire Insurance in the amount of $4 million in punitive damages. The jury's award is eight times greater than the next highest award ever affirmed by this Court in Von Hake v. Thomas, 705 P.2d 766 (Utah 1985) ($500,000 punitive award affirmed), and 20 times greater than the second highest affirmed award in Synergetics v. Marathon Ranching, 701 P.2d 1106 (Utah 1985) ($200,000 punitive award affirmed).

In Crookston, this Court noted that the punitive award in this case "is far greater than the awards reduced in many prior cases" and "exceeds the bounds of the general pattern set by . . . prior decisions." Crookston, 817 P.2d at 801, 807 (emphasis added). It is well established that punitive damages are a harsh remedy and not normally favored in law. Alyeska Pipeline Service Co., Inc. v. Beadles, 731 P.2d 572 (Alaska 1987); Rosener v. Sears Roebuck and Co., 110 Cal.3d 740, 168 Cal.Rptr. 237 (1980); Sere v. Group

Hospitalization, Inc., 443 A.2d 33 (D.C. Ct.App. 1982); Cheney v. Palos Verdes Investment Corp., 104 Idaho 897, 665 P.2d 661 (1983); Tucker v. Illinois Power Co., 232 Ill.App.3d 15, 597 N.E.2d 220 (1992); Tideway Oil Programs, Inc. v. Serio, 431 So.2d 454 (Miss. 1983); Home Ins. Co. v. American Home Products Corp., 75 N.Y.2d 196, 551 N.Y.Supp.2d 481, 550 N.E.2d 930 (1990); Becker v. Pearson, 241 Or. 215, 405 P.2d 534 (1965). Since punitive awards are not favored, this Court has correctly observed that large punitive awards should be scrutinized closely. Crookston, 817 P.2d at 810.

The trial court in this case has now been given two opportunities to either order a new trial on the issue of punitive damages or to reduce the unprecedented punitive damage award. The trial court has twice refused to grant any such relief to defendant. Although the trial court must be accorded some discretion on ruling on the excessiveness of a punitive damage award because of the court's advantaged position during trial, less discretion should be accorded to the trial court on the review of a punitive damage award. See Wilson v. Oldroyd, 1 Utah 62, 267 P.2d 759, 766 (1954).

In this case, this Court is now faced squarely with a punitive damage award 800% greater than any other award ever affirmed by this Court. Plaintiffs contend that such an unprecedented award is required due to the nature of defendant's conduct and the size and nature of defendant's business. Such factors are wholly insufficient to sustain the staggering award of punitive damages in this case. Historical patterns developed in punitive damage cases

in this state over nearly 100 years, and more especially in the modern era, clearly demonstrate that the jury's verdict in this case and the trial court's refusal to grant a new trial or remit the damage award, were unsupportable. Prior deviations from the historical patterns by themselves have in the past been sufficient for this Court to conclude that the awards were the result of passion and prejudice. Crookston, 817 P.2d at 810. Under such circumstances, this Court has been required to step in and reduce the awards directly or to order a new trial. This Court should, therefore, order either a remittitur or a new trial on the issue of punitive damages in this case.

B. The Lack of a Reasonable and Rational Relationship

In addition to the unprecedented size of the punitive award in this case, the ratio between punitive damages and the compensatory damages awarded by the jury in this case is unsupportable and demands that this Court remit the punitive damage award or grant defendant a new trial. This Court in Crookston identifies more than 20 reported punitive damage cases in the state of Utah which have produced "fairly predictable results" on the required ratio that should exist between punitive damages and compensatory damages. Crookston, 817 P.2d at 809, 810. By law, punitive damages must generally bear a "reasonable and rational relationship" to the actual damages awarded at trial. Id. In reviewing the "language and pattern of results" from prior decisions of this Court, this Court found the following presumptive ratios exist:

> The general rule to be drawn from our past cases appears to be that where the punitives are well below $100,000, punitive damage awards beyond a 3 to 1 ratio to actual damages have seldom been upheld and that where the award is in excess of $100,000, we have indicated some inclination to overturn awards having ratios of less than 3 to 1.

Id. (emphasis added).

The following chart identifies the specific action taken by this Court in the punitive damage cases identified in footnote 24 of the Crookston opinion:

Case	Jury Award (p.d. = punitive damages, comp. = compensatory damages)	Ratio Punitive Damages to Compensatory Damages	Appellate Action Taken on Punitive Damage Award
Von Hake v. Thomas	$500,000 p.d. $487,000 comp.	1.03 to 1	Affirmed
Jensen v. Pioneer Dodge	$100,000 p.d. $1,234.50 + $50/ day comp.[1]	81 to 1	Reversed and remanded
Synergetics v. Marathon	$200,000 p.d. $452,000 comp.	44 to 1	Affirmed
Bundy v. Century Equipment	$75,000 p.d. (trial court remitted to $25,000), $2,133 comp.	11.7 to 1	Remanded
Nelson v. Jacobsen	$25,000 p.d. $59,600 comp.	.42 to 1	Reversed and Remanded
Cruz v. Montoya	$12,000 p.d. $9,579.89 comp.	1.25 to 1	Reduced punitive award to $6,000
Branch v. Western Petroleum	$13,000 p.d. $18,750 comp.	.69 to 1	Affirmed
Leigh Furniture v. Isom	$35,000 p.d. (trial court remitted to $13,000) $65,000 comp.	.54 to 1	Reinstated jury award

[1]Per diem damages would have exceeded $70,000 at time of opinion. As a result, ratio was likely 1.4 to 1.

Case	Jury Award (p.d. = punitive damages, comp. = compensatory damages)	Ratio Punitive Damages to Compensatory Damages	Appellate Action Taken on Punitive Damage Award
First Security Bank v. JBJ Feedyards	$100,000 p.d. $36,564.60 comp.	2.7 to 1	Reduced award to $50,000
Clayton v. Crossroads Equip. Co.	$20,000 p.d. $27,500 comp.	.73 to 1	Affirmed
Elkington v. Foust	$30,000 p.d. $12,000 comp.	2.5 to 1	Affirmed
Terry v. ZCMI	$15,000 p.d. (trial court remitted to $2,000), $6,500 comp.	2.3 to 1	Reinstated jury award
Kesler v. Rogers	$10,000 p.d. $25,403.17 comp.	.39 to 1	Reduced award to $5,000
Prince v. Peterson	$3,000 p.d. $5,537 comp.	.54 to 1	Reduced award to $5,000
Holdaway v. Hall	$5,000 p.d. $10,683.50 comp.	.47 to 1	Affirmed
Powers v. Taylor	$2,500 p.d. (trial court remitted to $1,500), 1,350 comp.	1.1 to 1	Affirmed
DeVas v. Noble	$750 p.d. $200 comp.	3.7 to 1	Affirmed
Nance v. Sheet Metal Workers Int'l Assoc.	No damages (trial court award $1 nominal damages, $14,000 in attorneys' fees, and $40,000 p.d.	40,000 to 1	Reversed and reinstated jury's finding of no damages
Holland v. Moreton	$25,000 p.d. $95,833 comp.	.26 to 1	Affirmed
Ostertag v. LaMont	$2,000 p.d. (trial court remitted to $860), $140 comp.	6.14 to 1	Affirmed
Sadlier v. Knapton	$2,000 p.d. $8,000 comp.	.25 to 1	Affirmed
Wilson v. Oldroyd	$25,000 p.d. $50,000 comp.	1 to 2	Reduced punitive award to $5,000

Case	Jury Award (p.d. = punitive damages, comp. = compensatory damages)	Ratio Punitive Damages to Compensatory Damages	Appellate Action Taken on Punitive Damage Award
Evans v. Gaisford	$1,499.95 p.d. $1,000 comp. (trial court remitted p.d. to $1,000 and comp. to $900)	1.1 to 1	Affirmed

At the present time, the $4.0 million punitive award bears more than a 4.9 to 1 relationship to the compensatory award, which this Court has already recognized was "admittedly liberal." Crookston, 817 P.2d at 806-807, fn. 22. Plaintiffs and even the trial court on remand have sought to recompute and recharacterize the "actual damages" in this case in order to bring the punitive award within the presumptive ratio. Such attempts have, however, failed.

With the exception of Ostertag v. LaMont, 9 Utah 2d 130, 339 P.2d 1022 (1959) (Upholding punitives of $860 to actual damages of $140) and DeVas v. Noble, 13 Utah 2d 133, 369 P.2d 290 (1962) (Upholding punitives of $750 to actual damages of $200), no reported decision listed by this Court in Crookston has sustained a jury verdict with a ratio greater than the presumptive ratios enunciated in Crookston. The punitive damage award in this case stands out in stark defiance of this Court's prior pronouncements that punitive damages should bear a reasonable and rational relationship to actual damages sustained. Absent such a relationship, this Court in the past has been required to label such deviant verdicts as "grossly disproportionate" and "the result

of passion and prejudice." The trial court's refusal to remit the punitive damage award or to grant a new trial in this case was an abuse of discretion because such damages do not bear a reasonable and rational relationship to the compensatory damages in this case.

C. The Trial Court Abused Its Discretion By Failing to Distinguish Between "Hard" Damages and "Soft" Damages

The instant case presents an even more compelling case for this Court to modify the punitive damage award because of the significant amount of "soft" damages already awarded to plaintiffs. While a trial court may not be bound to reduce a punitive damage award merely because it exceeds the presumptive ratios set forth in Crookston, a reviewing court should carefully examine the distinction between "hard" and "soft" actual damages in determining the appropriateness of a punitive damage award. Crookston, 817 P.2d at 811, fn. 29. Where actual damages are largely "soft," this Court should be reluctant to uphold punitive awards "that might survive scrutiny if the actual damages involved were 'hard.'" Id. In this case, plaintiffs' compensatory damages of $815,826 were approximately 60% "soft" and 40% "hard." The punitive award in this case bears an approximately 12.4 to 1 relationship to the hard damages. The trial court's refusal to remit the punitive damage award in this case, even where the "less than 3 to 1" ratio is suspect, is compelling evidence that the trial court abused its discretion in denying Fire Insurance's motion for new trial or remittitur.

POINT III.

THE TRIAL COURT IMPROPERLY RELIED UPON FACTS AND UNREASONABLE INFERENCES OUTSIDE THE RECORD IN SUPPORT OF THE PUBLIC POLICY CONCERNS OF PUNISHMENT AND DETERRENCE.

Plaintiffs assert that the trial court's ruling on defendant's motion for new trial or remittitur and the jury's initial unprecedented punitive damage award were reasonable because of the need to punish defendant and to deter further misconduct by defendant.[2] Plaintiffs assert that defendant can only be punished by a large monetary award. Likewise, plaintiffs assert that future misconduct on the part of defendant cannot be deterred until and unless the jury's original $4.0 million punitive award is affirmed. In order to arrive at these assertions, plaintiffs invited the trial court to engage in groundless speculation and conjecture about defendant's propensity to engage in future misconduct, defendant's attitude towards this litigation, defendant's attitude towards its employees who made mistakes in the handling of plaintiffs' claim, and a whole host of other factors.

Plaintiffs baldly assert that defendant, because of the nature of its business, has the opportunity to engage in further similar misconduct. The record is clear that one of the complicating factors in this case was the uniqueness of the loss. All the parties, including plaintiffs, experienced difficulty in obtaining

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[2]Plaintiffs' analysis of the traditional "list of factors" standards as further supporting the present punitive award is addressed in Fire Insurance's initial brief, pp. 11-24.

competent and complete repair bids on the destroyed structure. The uniqueness of the circumstances presented in this case suggests the unlikelihood of similar misconduct in the future. While defendant continues to handle numerous claims throughout Utah and the United States, there was no evidence presented to the jury to suggest that the mistakes of the defendant's employees were part of any pattern of fraud or other wrongdoing. The uniqueness of the circumstances presented in this case militates in favor of a remittitur. See Bundy v. Century Equipment Co., 692 P.2d 754, 759 (Utah 1984).

Plaintiffs also assert that a large award is required in order to deter further misconduct because defendant has built-in financial incentives to cheat and chisel its insureds on claims. No such evidence was presented at trial. Common sense and reason suggests that in a highly competitive business, there is no reasonable incentive to engage in conduct similar to that for which defendant is now being punished. The disincentive to cheat or chisel one's own insureds is demonstrated that a $21,612 underpayment has now been parlayed into a multi-million dollar judgment against defendant.

Plaintiffs continue to assert that defendant should be punished because there has been "no indication of contrition or remorse" on the part of defendant and its employees. Plaintiffs point to the promotion of the claims adjusters who handled plaintiffs' claims and defendant's alleged failure to "voluntarily take any action to rectify the wrongs" or "reprimand the perpetrators" as evidence of a calculated and calloused attitude

which merits severe punishment by this court. Plaintiffs successfully urged the trial court to assume that the promotions of defendant's employees were attempts to "applaud" the misconduct and the result of those employees' "record of improving profits for Fire Insurance." (R. 3204) Plaintiffs also successfully urged the trial court to assume that "to this day [defendant] has failed or refused to recognize the wrong it has wrought upon the plaintiffs." (R. 3218) The record, however, on each of these "facts" is silent. Likewise, even if these "facts" are viewed as merely inferences drawn by Judge Frederick from the facts in the record, such inferences were unreasonable.

The trial court's nearly verbatim adoption of plaintiffs' memorandum in opposition to defendant's motion for new trial or remittitur into the court's order resulted in the trial court's order being based upon facts and inferences wholly without record support. (See R. 3094-3177, 3197-3219, 3238-3243) In such cases, the trial court's reliance on such facts provides a separate ground for reversal. Crookston, 817 P.2d at 805, n. 19.

CONCLUSION

Based upon the foregoing, defendant Fire Insurance Exchange respectfully requests that this Court either grant defendant a new trial on the issue of punitive damages utilizing the Crookston standards or that this Court order a remittitur of the unprecedented award of punitive damages in this case.

Dated this 29th day of October, 1992.

STRONG & HANNI

By _____
Phillip R. Fishler
Stephen J. Trayner
Attorneys for Defendant-Appellant

202874nh

CERTIFICATE OF SERVICE

I hereby certify that four true and correct copies of the foregoing Reply Brief of Defendant-Appellant was mailed, first class postage prepaid, this 29th day of October, to the following:

L. Rich Humpherys
CHRISTENSEN, JENSEN & POWELL
Attorneys for Plaintiffs-Respondents
510 Clark Leaming Building
Salt Lake City, Utah 84101

_____